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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,163	04/12/2007	Franciscus J Groenhof	011801-0048-999	2012
20583	7590	09/14/2011	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			HOLLOMAN, NANNETTE	
			ART UNIT	PAPER NUMBER
			1612	
			MAIL DATE	DELIVERY MODE
			09/14/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,163

Applicant(s)

GROENHOF, FRANCISCUS J

Examiner

NANNETTE HOLLOMAN

Art Unit

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-4,6 and 9-15 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-4,6 and 9-15 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>08/04/2011</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

This Office Action is in response to the Request for Continued Examination filed on August 4, 2011. Applicants' arguments, filed August 4, 2011, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Information Disclosure Statement

The information disclosure statement filed August 4, 2011 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Applicant has not provided a copy of the foreign patent documents B-15, B-16, B-17 and B-18. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 103

Claim 1-4, 6 and 9-15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Dederen et al. (US Patent Pub. No. 2002/0065328). This rejection is maintained.

Applicant's Arguments

Applicant has amended instant claim 1 to recite the amounts of components i) and ii). Applicant argues Dederen does not disclose the surfactant composition of the pending claims. Applicant's arguments have been fully considered but they are not persuasive.

Examiner's Response

Dederen et al. disclose non-ionic emulsifiers that meet the limitation of "at least one polyoxyalkylene branched surfactant", i.e. EM 15, Arlasolve® 200- iso-cetyl alcohol 20 ethoxylate, which has a high HLB (hydrophile lipophile balance), and a "surfactant capable of forming liquid crystals in water" (instant claims 9-14), i.e. EM 13, Arlatone® 2121-mixture of sucrose cocoate and sorbitan stearate, which has a low HLB (p.9, para. [0106] and [0104]). Dederen et al. disclose the said components as emulsifiers and when a combination of high HLB and low HLB emulsifiers are used, the amount of the high HLB emulsifier can range from about 0.1 to about 1.5% and the low HLB emulsifier can range from about 0.1 to 1% (p. 5, para. [0033] and [0034]).

The prior art discloses the use of 0.1 to about 1.5% high HLB emulsifier, which is the same as applicant's "at least one polyoxyalkylene branched surfactant". Thus, the prior art differs from the instant claims insofar as it does not disclose the particular endpoints recited therein, i.e. 1 to 10 %. It is well-settled, however, that even a slight overlap in range establishes a *prima facie* case of obviousness. In re Peterson, 65 USPQ2d 1379, 1382 (Fed. Cir. 2003). Accordingly, it since an overlap plainly exists here, it would have been obvious to have selected values within the overlap, consistent with the reasoning of the Peterson decision.

Therefore, the reference meets the limitations of the claimed ranges of components i) and ii) of instant claim 1.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANNETTE HOLLOMAN whose telephone number is (571)270-5231. The examiner can normally be reached on Mon-Fri 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. H./
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612